THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NOS.176 AND 177 OF 2006

21st February 2006

1.WRIT APPEAL NO.176 of 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 01.02.2006 in W.P.NO.325 OF 2006 on the file of the High Court.)

Between:

Major B.G. Viswas, S/o. Late Sri B. Venkata Ratnam,
S.G.S.Y.M. Aided Degree College, Kasibugga, Srikakulam District.

...APPELLANT

AND

The President and Correspondent, Sri Bala Siva Yogendra Maharaj Degree College, Kasibugga, Srikakulam District.

...RESPONDENT

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2.WRIT APPEAL NO.177 of 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 01.02.2006 in W.P.NO.25765 OF 2005 on the file of the High Court.)

Between:

Major B.G. Viswas, S/o. Late Sri.B. Venkata Ratam,
Principal of S.B.S.Y.M. Aided Degree College, Kasibugga, Srikakulam District.

...APPELLANT

AND

1. The President and Correspondent, Sri. Bala Siva Yogendra Maharaj Degree College, Kasibugga, Srikakulam District.

And one other.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NOS.176 AND 177 OF 2006

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COMMON JUDGMENT: (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard Sri M.Kesava Rao, the learned counsel appearing for the appellant and Sri M.Gangaiah Naidu, the learned counsel appearing for the respondents in both the appeals.

These two appeals arise out of common order dated 01.02.2006 in Writ Petition Nos.25765 of 2005 and 325 of 2006, filed by the appellant herein. Hence, they are taken up together for disposal at the admission stage.

The appellant/unsuccessful writ petitioner sought to assail the letter dated

27.11.2005 where under an Enquiry Officer was appointed and issued a notice to him requiring him to appear in the proceedings in one Writ Petition and another Writ Petition is filed for continuing him as a Principal.

The main objection raised on behalf of the appellant is that having regard to the provision under Rule 7 (2) of the Andhra Pradesh Private Institutions Employees (Discipline and Control) Rules, 1983 ('the Rules' for brevity), necessarily the Enquiry Officer appointed should be of Superior rank to that of the charged person. Since the Enquiry Officer who is appointed now is a retired Principal and the appellant being the Principal, the Enquiry Officer cannot be said to be superior to the appellant.

That apart, the counsel raised another objection as to the bias on the ground that no opportunity was given and even as per the observation given by the learned Single Judge in regard to the experience of the Enquiry Officer, he cannot go on with the enquiry.

Having regard to the submissions made on either side and on perusal of the material available on record, we are satisfied with the decision as rightly held by the learned Single Judge that even by giving any extent of interpretation of the afore said Rules, necessarily there is no doubt that the Enquiring Authority has to be of Superior rank to that of the charged person. However, the fact remains that the appellant is the Principal and there is no such post as such in the institution over and above the post of Principal. Therefore, necessarily one has to go for Principal as the Enquiring Authority. Though the learned counsel for the appellant specified that a Regional Director can as well be appointed as an Enquiry Officer, we are not

prepared to accept such suggestion since such officer is a Superior Authority for the purpose of appeals and administration control. In the circumstances, we do not find any merits in the first objection.

Coming to the other objection as to the bias on the part of the Enquiry officer in not providing an opportunity, the learned Single Judge already gave a direction to give proper opportunity to the appellant for the purpose of cross examination in the said enquiry. In view of the above, we do not find any merits in the second objection also.

Both the appeals are accordingly dismissed. However, the Enquiry Officer shall complete the enquiry within one month from today. No costs.

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(B.PRAKASH RAO, J)

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(D.APPA RAO, J)

21st February 2006

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